

Judicial reforms are simple to make, yet long awaited

Essam Al Tamimi - Chairman - Private Client Services / Arbitration / Litigation / Family Business
e.tamimi@tamimi.com - Dubai International Financial Centre

November 2013

Having recently been involved in matters in different countries in Europe, I realised that legal reforms are needed in those countries as much as they are needed in the UAE and its neighboring countries. The legal system and the process, including the judicial system, of each country need to evolve to catch up with the growth of the country.

We have been fortunate in the UAE to have an independent judicial system with a lack of corruption in its legal system. Major investment has been made in judicial institutes, judicial training and improving the legal system. In particular, major investment has been made in the judicial IT system to the extent that the Dubai Courts (and soon Abu Dhabi Courts) can be classified as leading courts in the implementation and use of IT systems.

Judicial training institutes in the UAE have been extremely active in providing training for junior judges as well as continuing education for senior judges. These institutes have also succeeded in bridging the gap between the private law practitioners and judges with open communication and exchange of ideas, particularly in Dubai. Workshops and seminars provide opportunities for judicial staff and practitioners to exchange ideas on how the practice can be improved on both sides. However, there are areas where the judicial system urgently needs reform.

In my opinion, there are two major challenges to judicial reforms being successful in the UAE:

- Firstly, the legal education provided by colleges and universities in the UAE needs a major revamp in terms of the quality of lecturers and the materials provided to its students; and
- Secondly, changes need to be made to the case management process as the current system is based on the old fashioned civil law procedure which encourages bureaucracy and inefficiency.

College education is an important subject, but one which I will leave for another debate. For the purpose of this article I will instead focus on the case management process and how this affects the overall performance of the judicial system.

Cases are currently managed by the court through the exchange of pleadings in a civil law model where a case is filed, pleadings exchanged and documents submitted. A brief hearing of approximately five minutes duration takes place during which the parties exchange their pleadings and documents. The parties are then provided an opportunity to review, comment and file their counter pleadings and documents. Numerous pleadings and bundles of documents are submitted in the process which can feel endless and result in the process occurring up to eight times or more before the case is reserved for judgment.

If the case is referred to an expert, which is a common practice, the process is further delayed. The expert's report is filed in court and the parties will then exchange pleadings and documents commenting on the expert's report. The experts are not required to appear before the court for cross-examination except in very rare circumstances, which means that their input is restricted to the comments in their written report.

In my opinion, there are five essential changes which need to be adopted by the UAE Civil Procedure Law for efficient dispute resolution to occur. Firstly, referring cases to an expert should only happen in extreme and rare circumstances. Additionally, the responsibility should be on the parties to jointly appoint a suitably qualified and experienced expert to produce a report.

Secondly, if an expert is appointed it must be mandatory for the expert to make themselves available for cross-examination. The court and parties will gain confidence in the competence of the expert and their findings by having them answer questions raised by the parties. The judge will also be able to determine whether or not either party has a reasonable challenge against the expert's report, finding or qualifications. Cross-examination will prevent experts hiding behind reports which may not be technically sound or do not adequately cover the task allocated to them.

Thirdly, the system of exchanging pleading after pleading with numerous adjournments needs to change. The current system results in the key arguments of a case being diluted by the numerous pleadings submitted and the progress of the case being delayed for months, if not years. The judge is often provided with case documents that are not in order, not marked and the contents often duplicated and repeated. It is possible and extremely simple to amend the UAE Civil Procedural Law to produce a case management system which will help the courts achieve their primary service, which is reliable and efficient dispute resolution. Amendments that need to be made include:

- Well trained and experienced court clerks being involved in the case management process and assisting the parties and the judge.
- Introducing a requirement for all documents and pleadings to be exchanged before the hearing takes place.
- A requirement for case files to be organised and complete when provided to a judge prior to the hearing.
- A requirement for the hearing date to be set following the completion of the exchange of pleadings and documents and for the parties to come before the judge in an open hearing where they can present the case before the judge.
- If any other matters arise which need to be dealt with, they can be raised at the hearing and determined by the judge. Otherwise the case will be reserved for judgment.

If the above approach is adopted, hearing from experts or witnesses will not result in delays to a case as their findings and statements will have been included in the submissions and pleadings and they will therefore not come as a surprise to either of the parties. This process will result in the cases being completed (in terms of documents relied on), heard and reserved for judgment more quickly.

Fourthly, cases are often delayed because of ineffective service of summons and notices due to uncertainty of addresses and service details. This obstacle can be easily overcome by the court working with the Department of Naturalisation and Residency or the Emirates Identity Authority which could make it extremely simple and easy to locate people within the UAE.

Finally, improvements are needed in relation to the enforcement of judgments. Locating parties and assets is still a challenge before the UAE judicial system, unless cash is readily available. The court could work with the different authorities in the UAE such as the

Registrar of Assets, Land Department and Stock Market to help locate parties and their assets. This will result in the system being more effective and efficient and will eliminate delay and hardship resulting from the prolonged enforcement of judgments.

There are many more reforms which I believe should be considered. The awarding of professional legal costs to a party who is successful at trial, rather than the nominal advocacy fees which are currently awarded, is another beneficial proposal. The awarding of costs would not only promote access to justice as more people would be able to afford to litigate their disputes, but would also encourage parties to behave correctly (rather than risk being penalised in respect of costs). Additionally, the current disclosure obligations should be amended so they are more onerous.

As you will see from the above, changes can be made which do not require flipping the entire system upside down. Instead, five simple changes to a few articles of the UAE Civil Procedure Law and the internal management of the court could have a large impact. These changes are likely to improve the efficiency of the judicial system immensely. The proposed reforms are not alien and have been successfully implemented elsewhere. The DIFC Courts (a court that exists in the Emirate of Dubai) has a similar system which has been tested and is working well. We need not necessarily follow the DIFC Court's system, but reforms as outlined in this article are needed to improve the case management system so that it can progress and develop in line with the development of the UAE's businesses and economy. This will also help to instill confidence in nationals and expatriates in the judicial system of the UAE.